

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WILLIS LAVONE CREECH,

No. C 11-03670 CRB

Plaintiff,

CERTIFICATE OF APPEALABILITY

v.

ROBERT H. TRIMBLE, WARDEN,
PLEASANT VALLEY STATE PRISON
Respondent.

Now before the Court is Creech's notice of appeal which this Court shall construe as a request for issuance of a certificate of appealability ("COA"). A judge shall grant a COA "if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: the petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000). Indeed, "a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail." Miller-El v. Cockrell, 537 U.S. 322, 338 (2003).

Here, the Court concludes that reasonable jurists could debate (1) whether there was insufficient evidence to support Creech's convictions for assault with a firearm and child endangerment, and (2) whether the imposition of aggravated terms violated Creech's right to a trial by jury under the Sixth and Fourteenth Amendments so as to warrant relief under 28 U.S.C. § 2254(d). The Court GRANTS a certificate of appealability as to those two claims.

IT IS SO ORDERED.



Dated: August 22, 2013

CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE